

APPENDIX 'H'

**AERONAUTICS SECTOR STANDARD COMMERCIAL
TERMS & CONDITIONS FOR SERVICES**

1. Definitions

As used herein "Buyer" means Lockheed Martin Corporation, acting through its Aeronautics Material Management Center; "Seller" means the party identified on the face of this PO; "Services" includes services performed, workmanship, and material furnished or used in the performance of services; and "PO" means this purchase order or subcontract; "Buyer's Authorized Representative" means the person or persons from the Aeronautics Sector Procurement Department, and any other person or persons authorized by Buyer to alter, modify or change the provisions of this PO.

2. Delivery

- (a) Delivery shall be made in strict accordance with the provisions of this PO.
- (b) In the event of termination or change, no claim will be allowed for any Services performed, materials furnished or used in the performance of Services or other procurement by Seller in advance of reasonable flow time unless Buyer's prior written consent has been obtained by Seller for such advance performance or procurement.
- (c) If, at any time, it appears to Seller that any delivery schedule cannot be met, Seller shall notify Buyer as soon as possible as to the cause or causes thereof, action being taken to remove such cause or causes and when on-schedule status will be achieved. Seller, at its expense, shall take reasonable action necessary, with or without request of Buyer, to meet such schedules as set forth herein or to recover to the maximum extent possible any delay caused by Seller in meeting such schedule. Notification under this Article shall in no way limit Buyer's rights under other provisions of this PO, at law, or in equity.

3. Inspection

- (a) Seller shall provide and maintain an inspection system acceptable to Buyer covering the Services under this PO. Complete records of all inspection work performed by Seller shall be maintained and made available to Buyer during PO performance and for as long afterwards as this PO requires.

- (b) Buyer and Buyer's customer each shall have the right to inspect and test all Services called for by this PO, to the extent practicable at all times and places during the term of this PO. All inspections and tests shall be performed in a manner that will not unduly delay the work.
- (c) If Buyer and/or Buyer's customer perform inspections or tests on the premises of Seller or Seller's subcontractor(s), Seller shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (d) If any of the Services do not conform with PO requirements, Buyer may require Seller to perform the Services again in conformity with PO requirements, at no increase in the PO amount. When the defects in Services cannot be corrected by reperformance, Buyer may (1) require Seller to take necessary action to ensure that future performance conforms to PO requirements and (2) reduce the price specified in this PO to reflect the reduced value of the Services performed.
- (e) If Seller fails to promptly perform the Services again or to take the necessary action to ensure future performance is in conformity with PO requirements, Buyer may (1) by contract or otherwise, perform the Services and charge to Seller any cost incurred by Buyer that is directly related to the performance of such Service or (2) terminate this PO for default.

4. Variation in Quantity

Services shall not be supplied in excess of quantities specified herein. Seller shall be liable for all charges and costs for any excess quantities; and, unless Seller agrees to pay such costs, the excess Services will be retained by Buyer at no cost.

5. Prices

Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government. Seller warrants that prices charged for the Services are not higher than those charged to any other customer, including, without limitation, the U.S. Government, for Services of like grade and quality in similar or lesser quantities.

6. Invoices, Payments, and Discounts

Unless otherwise provided, terms of payment shall be net 30 days from the latest of the following:

- (a) Buyer's receipt of Seller's correct invoice;
- (b) Scheduled delivery date for the performance of Services; or
- (c) Actual delivery, or completion of performance of Services.

Buyer shall have a right of setoff against payments due under this PO for any amounts at issue under this PO or other purchase orders between Buyer and Seller.

7. Warranty

- (a) "Acceptance," as used in this clause, means the act of an authorized representative of Buyer by which Buyer assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific Services, as partial or complete performance of this PO. 'Correction,' as used in this clause, means the elimination of all defects.
- (b) Notwithstanding inspection and acceptance by Buyer or any provision concerning the conclusiveness thereof, Seller warrants that all Services performed under this PO will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this PO. Buyer shall give written notice of any defect or nonconformance to Seller within twelve (12) months from the date of acceptance by Buyer, or, in the event Seller performs a service on an item(s) which will be delivered by Buyer to its customer, than twelve (12) months from the date of delivery to Buyer's customer. This notice shall state either (1) that Seller shall correct or reperform any defective or nonconforming Services, or (2) that Buyer does not require correction or reperformance.
- (c) If Seller is required to correct or reperform, it shall be at no cost to Buyer, and any Services corrected or reperformed by Seller shall be subject to this clause to the same extent as work initially performed. If Seller fails or refuses to correct or reperform, Buyer may, by contract or otherwise, correct or replace with similar Services and charge to Seller the cost occasioned to Buyer thereby, or make an equitable adjustment in the price of this PO.
- (d) If Buyer does not require correction or reperformance, Buyer shall make an equitable adjustment in the price of this PO.
- (e) Year 2000 compliant, as used in this clause, means that with respect to information technology, that the information technology accurately processes date/time data (including but not limited to, calculating,

comparing, and sequencing) from, to, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date/time data with it.

Any and all products provided hereunder will be Year 2000 compliant at the time of delivery to Lockheed Martin Corporation (Lockheed Martin), including but not limited to accurately inputting, storing, manipulating, comparing, calculating, updating, displaying, outputting, and transferring such dates and data unless otherwise expressly provided herein by Lockheed Martin.

This provision takes precedence over all other provisions of this agreement with respect to Year 2000 compliance. In the event of a discovery of any non-compliance, either before, concurrent with, or subsequent to delivery of a good or service under this agreement, the discovering party shall notify the other party within five (5) business days of discovery. If the defective good or service is being presented for acceptance or has already been delivered, at Lockheed Martin's option, the defective good or service shall be repaired or replaced within ten (10) business days of such notice at no cost to Lockheed Martin.

Nothing in this provision shall be construed to limit any other rights or remedies under this contract, at law or in equity that Lockheed Martin may have with respect to Year 2000 compliance.

- (f) The rights and remedies of Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided at law, in equity, or under this PO.

8. Compliance with Laws

Seller shall comply with the applicable provisions of all Federal, state, and local laws and ordinances and all lawful orders, rules and regulations thereunder. Seller agrees to indemnify Buyer against any loss, cost, damage or liability by reason of Seller's violation of this clause.

9. Changes

- (a) Buyer's authorized representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general

scope of this PO in any one or more of the following: (i) description of Services to be performed; (ii) time of Services to be performed (hours of the day, days of the week, et cetera); (iii) place of performance (iv) delivery schedule.

- (b) Except as may otherwise be expressly provided in this PO, if any such change under subparagraphs (a)(i), (ii), or (iii) above causes an increase or decrease in the time required for performance of this PO, whether or not directed by such change, Buyer shall make an equitable adjustment in the delivery schedule, and the affected PO(s) shall be modified accordingly in writing.
- (c) Except as may otherwise be expressly provided in this PO, if any change under paragraph (a) above causes an increase or decrease in the cost or performance of any part of this PO, whether or not directed by such change, Buyer shall make an equitable adjustment in the price of this PO, and this PO shall be modified accordingly in writing.
- (d) Such costs, if any, shall be calculated in a manner similar to that used to originally price the Services and shall be for the net increase or decrease in the cost for the changed portion only. In no event shall Seller reprice any portion of the Services unaffected by the change. Seller must assert its right to an adjustment under this clause, if at all, within thirty (30) days from date of the change to which such adjustment is attributable.
- (e) Seller agrees that its failure to submit such claim or claims within the applicable time period shall constitute a waiver thereof unless (i) such failure resulted from good and sufficient cause, (ii) Seller requests in writing, prior to expiration of the applicable time period, that a time extension for filing its claim or claims be granted by Buyer, and (iii) Buyer grants such extension. Any such extensions, if approved, shall be effective only if authorized in writing by Buyer's Authorized Representative. Prior to final settlement of any timely filed claim or claims, Seller may submit revisions to such claim or claims provided that such revisions do not introduce different areas of costs or claim elements.
- (f) Failure to agree to any adjustment shall be a dispute under the "Disputes" clause of this PO. However, nothing contained in this "Changes" clause shall relieve Seller from proceeding without delay in the performance of this PO as changed.

10. Responsibility for Property

Unless otherwise specified, Seller shall be liable for any loss or destruction of or damage to property of Buyer or any customer of Buyer whether furnished to Seller by any such customer or by Buyer; and, Seller shall be responsible for returning any such property in as good condition as when received except for reasonable wear and tear and for the utilization of it in accordance with the provision of this order. Upon request of Buyer such property will be delivered to Buyer at Seller's expense. Seller will promptly notify Buyer if such property is lost, destroyed or damaged. Title thereto shall not be affected by the incorporation or attachment to any property not owned by Buyer or such customer, nor shall any such property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

11. Data Rights

Data and Information Disclosed to Buyer

Unless the data and information disclosed to Buyer is covered by and identified in accordance with a Proprietary Data Agreement between Buyer and Seller, any data and information which Seller has disclosed or may hereafter disclose to Buyer in connection with the purchase of the Services covered by this PO shall not be deemed to be proprietary data and information; and it shall be acquired by Buyer free from any restrictions regarding its use or disclosure.

Information Disclosed to Seller

Seller shall keep confidential all information, drawings, specifications or data either:

- (a) furnished by Buyer and captioned as proprietary or
- (b) prepared by Seller specifically in connection with the performance of this PO; and, Seller shall not divulge or use such information, drawings, specifications or data to provide goods or Services to any other customer. Except as required for the efficient performance of this PO, Seller shall not make copies or permit copies to be made without the prior written consent of Buyer. Seller shall thereafter make no further use, either directly or indirectly, of any such information, drawings, specifications, data, or of any derivation therefrom without obtaining Buyer's written consent. This clause shall not apply to information after its entry into the public domain other than as a result of a breach of this clause.

Items Developed by Seller for Buyer

Any invention, discovery, proprietary information, maskwork, software, system, data or report resulting from the work performed under this PO shall be the sole property of Buyer. All patents, copyright, trade secrets, trademarks, maskworks or other intellectual property resulting from work under this PO shall be the sole property of Buyer. Buyer shall have the full right to use such property in any manner without any claim on the part of Seller and without any duty to account to Seller for such use. Seller agrees to assign to Buyer any patent or patent application resulting from work performed under this PO, and to provide reasonable support for Buyer's prosecution of such patent application. Buyer and Seller agree that any original work of authorship created under this PO is a work made for hire for purposes of copyright ownership. To whatever extent Seller has any interest in any original work of authorship created under this PO, Seller agrees to assign and hereby assigns its entire interest in such work to Buyer, including all rights to derivative works.

12. Termination for Default

- (a)(1) Buyer may, subject to subparagraphs (c) and (d) below, by written notice of default to Seller, terminate this PO in whole or in part if (i) Seller fails to deliver or perform the Services within the time specified in this PO or any extension; (ii) Seller fails to make progress, so as to endanger performance of this PO (but see subparagraph (a)(2) below); (iii) Seller fails to perform any of the other provisions of this PO (but see subparagraph (a)(2) below); or (iv) in the event of the institution of any proceedings by or against Seller in bankruptcy or insolvency under any provisions of the Bankruptcy Act or for the appointment of a receiver or trustee or any assignment for the benefit of creditors.
- (a)(2) Buyer's right to terminate this PO under subdivisions (a)(1)(ii) and (a)(1)(iii) above may be exercised if Seller does not cure such failure within 10 days (or more if authorized in writing by Buyer) after receipt of the notice from Buyer specifying the failure.
- (b) If Buyer terminates this PO for default in whole or in part, Buyer shall have the right to acquire under the terms and in the manner it considers appropriate, Services similar to those terminated; and, Seller will be liable to Buyer for any excess costs for those Services. However, Seller shall continue performance of the portion of the PO not terminated.

- (c) If this PO is terminated for default, Buyer shall have the right to require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (1) completed Services, and (2) partially completed Services, materials, plans, drawings, information, and contract rights (collectively referred to as "Services" and/or "materials" in this clause) that Seller has specifically produced or acquired for the performance of the terminated portion of this PO. Upon direction of Buyer, Seller shall also protect and preserve property in its possession in which Buyer has an interest.
- (d) Buyer shall pay the PO price for completed Services delivered and accepted. Seller and Buyer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the "Disputes" clause of this PO. Buyer shall have the right to withhold from these amounts any sum Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lienholders.
- (e) After termination, if it is determined that Seller was not in default, or that the default was excusable, as set forth in the "Force Majeure" clause of this PO, the rights and obligations of Buyer and Seller shall be the same as if the termination had been issued for the convenience of Buyer.
- (f) The rights and remedies of Buyer in this "Termination for Default" clause are in addition to any other rights and remedies provided at law, in equity, or under this PO.

13. Termination for Buyer's Convenience

- (a) Buyer may terminate this PO, in whole or in part, at any time for its convenience by notice to Seller in writing. On receipt by Seller of such notice, Seller shall immediately comply with Buyer's instructions and, to the extent specified therein, stop work and the placement of subcontracts hereunder, terminate work under subcontracts outstanding hereunder, and take any action necessary to protect property in Seller's possession in which Buyer has or may acquire an interest. Within thirty (30) days of receipt by Seller of such notice, Seller shall advise Buyer of the actions taken by Seller to comply with Buyer's instructions and Seller shall also notify Buyer of Seller's intent to file a termination claim.

In the event Buyer terminates and Seller submits a termination claim, Buyer shall pay to Seller the following: (i) amounts due for completed Items delivered and accepted or performed in accordance herewith, and not

theretofore paid for prior to the effective date of termination; (ii) actual work in process costs incurred by Seller if properly allocable and apportioned under generally accepted accounting principles and practices to the terminated portion of this PO, including liabilities to subcontractors which are so allocable, excluding any and all costs of supplies which either can be diverted to other purchase orders of Seller or retained by Seller for its own use or future purchase orders, and exclusive of any costs attributable to Seller's supplies paid or to be paid for under (i) above; (iii) reasonable settlement expenses; and (iv) a sum, as profit, determined by Buyer to be fair and reasonable, on the work performed prior to receipt of the termination notice; provided, however, if it appears that Seller would have sustained a loss on the entire PO had it been completed, Buyer shall allow no profit under this subparagraph (iv) and shall reduce the total settlement to reflect the indicated rate of loss. In no event shall the total settlement (including settlement expenses) exceed the PO price.

- (b) Should there be an overpayment by Buyer to Seller as determined in accordance with subparagraph (a) above, as the result of a termination, Seller shall promptly reimburse Buyer for all sums overpaid. Seller's termination claim shall be submitted within 120 days after the effective date of the termination on forms provided by Buyer. Buyer shall not be required to make any determination on any late claim.
- (c) Seller agrees that its failure to submit a termination claim(s) within the 120 day period set forth in subparagraph (b) above shall constitute a waiver thereof unless Seller requests in writing prior to expiration of such time period that a time extension for filing its claim or claims be granted by Buyer. Any such extension, if approved, shall be effective only if authorized in writing by Buyer.
- (d) Buyer or Buyer's representative shall have the right to audit Seller's claim prior to payment.

14. Stop Work

Seller shall stop work for up to ninety (90) days in accordance with the terms of any written notice received from Buyer, or for such longer period of time as Buyer and Seller may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the work covered by this PO during the period of work stoppage.

Within such period, Buyer shall either terminate or continue the work by written order to Seller. In the event of a continuation, equitable adjustment shall be made to the price, delivery schedule, or other provision affected by the work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after such continuation. Claim costs, if any, shall be calculated in a manner similar to that used to originally price the Services and shall be for the increase or decrease in the cost caused only by the stop work.

15. Force Majeure

Neither Buyer nor Seller shall be liable, nor be deemed in default or failed in its performance of its obligations under this PO where such failure is due to causes beyond the control and without the fault or negligence of Buyer or Seller, as the case may be, including, but not limited to, Acts of God, Acts of the U.S. Government, fires, floods, riots, labor difficulties, embargo, and civil commotion ("Force Majeure").

Partial failure of performance due to any of the aforementioned causes shall not in itself terminate this PO or excuse any failure by either Buyer or Seller to resume all obligations as promptly as possible.

In the event either Buyer or Seller is affected in the performance of its obligations by any of the aforementioned causes, it shall give the other prompt written notice of the fact, together with satisfactory evidence substantiating that such cause prevents performance, as well as a declaration specifying the steps being taken by Buyer or Seller to remove the relevant cause(s) and shall continue the performance of its other obligations under this PO.

If a Force Majeure remains in effect for a period longer than six (6) months, then Buyer may terminate all or part of this PO which is affected by the Force Majeure. Having done so, both Buyer and Seller shall be relieved of any obligation for the canceled portion of this PO.

16. Patent Indemnity, Trademarks, Trade Secrets and Copyrights

Seller warrants that the manufacture, use, sale, delivery or disposal of goods or Services furnished under this PO will not infringe any United States or foreign patents, trademarks, trade secrets, copyrights or other property rights. Seller agrees to defend, indemnify and hold Buyer, its customers and agents harmless from any loss, including without limitation, cost damage, expense (including attorneys' fees) or liability which may be incurred on account of infringement or alleged infringement of any patent right, trademark, trade secret, copyright or

other property right with respect to such manufacture, use, sale, delivery or disposal of goods or Services and defend at its own expense any action or claim in which such infringement is alleged by a third party or parties, provided Seller is notified of such action or claim against Buyer.

17. Entry on Buyer's Property; Insurance

- (a) In the event that Seller or Seller's employees, contractors or agents enter on to Buyer's premises for any reason in connection with this PO, Seller and such employees, contractors or agents shall observe all military security requirements and all plant safety, plant protection and traffic regulations.
- (b) Seller, and any contractors used by Seller in connection with this PO, shall carry Workers Compensation and Employee's Liability Insurance to cover Seller's and such contractors' or agents' legal liability on account of accidents to their respective employees. Seller and its contractors shall carry adequate Comprehensive General Liability and adequate Comprehensive Automobile Liability Insurance covering the legal liability of Seller and such contractors and agents on account of accidents arising out of the operations of Seller or such contractors or agents and resulting in bodily injury, including death, being sustained by any person or persons, or in any damage to property. At Buyer's request, Seller shall furnish to Buyer certificates from Seller's insurers showing such coverage in effect and agreeing to give Buyer ten (10) days' prior written notice of cancellation of such coverage.

18. Waiver

Failure by Buyer either to enforce at any time the provisions hereof or to protest at any time any breach or default thereof shall not be construed as evidence to interpret the requirements of this PO, nor as a waiver of the provisions containing such requirements, nor as a waiver of the right of Buyer thereafter to enforce each and every such provision. Buyer's approval of documents shall not relieve Seller from compliance with specifications related to this PO. All rights and obligations hereunder shall survive final performance of this PO.

19. Disputes

Except as otherwise provided in this PO, Buyer and Seller shall have the right to redress any dispute arising under or related to this PO, which is not disposed of by agreement, by pursuing any right or remedy which Buyer or Seller, as the case

may be, may have at law or in equity in any United States court of competent jurisdiction. Pending resolution of any dispute, Seller shall proceed diligently with the performance of work, including the delivery of Services in accordance with this PO. Upon resolution of any such dispute, this PO shall be equitably adjusted, if necessary, to reflect such resolution.

20. Technical Surveillance

Buyer and authorized representatives of Buyer's customers shall have direct access to all areas of Sellers and Seller's subcontractors' plants where work under this PO is being performed, to review the work in process and to witness testing of Services, or materials furnished or utilized in the performance of such Services, related to this PO. Seller shall include this clause in all of Seller's subcontracts under this PO.

21. Amendments Required by the Prime Contract

Seller agrees that upon Buyer's request, it will from time to time enter into amendments of this PO to incorporate additional provisions herein or to change the provisions hereof, as Buyer may reasonably deem necessary in order to comply with the provisions of the prime contract(s) or with the provisions of amendments to the prime contract(s) under which this PO is issued. If any such amendment to this PO causes an increase or decrease in the cost of this PO, or the time required for performance of this PO, an equitable adjustment shall be made in the price or delivery schedule, or both, in accordance with the provisions of the "Changes" clause of this PO.

22. Assignment

Neither this PO nor any duty or right under it shall be delegated or assigned by Seller without the prior written consent of Buyer, except that claims for monies due or to become due under this order may be assigned to a bank, trust company or other financing institution, including any Federal lending agency, by Seller without such consent. Buyer shall be furnished with two signed copies of any such assignment. Payment to an assignee of any such claim shall be subject to set-off or recoupment for any present or future claim or claims which Buyer may have against Seller. Buyer shall have the right to make direct settlements or adjustments in price, or both, with Seller under the terms of this PO notwithstanding any assignment of claims for monies due or to become due hereunder and without notice to the assignee.

23. Governing Law

Unless otherwise expressly set forth herein, this PO shall be construed, interpreted and applied in accordance with the laws of Texas, excluding its choice of state law rules.

24. Acceptance of Order

This PO is the entire agreement between Buyer and Seller in respect of the subject matter of this PO and is subject to the terms and conditions herein. This PO supersedes all communications, representations or agreements, oral or written, between Buyer and Seller with respect to the subject matter of this PO. Either: (a) acknowledgment of this PO, (b) furnishing of Services under this PO, (c) acceptance of payment under this PO, or (d) commencement of performance, shall constitute Seller's unqualified acceptance of this PO. Additional or differing terms or conditions proposed by Seller or included in Seller's acknowledgment hereof shall be void and have no effect unless accepted in writing by Buyer.

25. Public Release of Information

No public release (including, without limitation, photographs, films, announcements, denials or confirmations of same) on any part of the subject matter of this PO or any phase of any program hereunder shall be made without the prior written approval of Buyer.

26. Severability of Provisions

Any provision of this PO that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition; and, shall be unenforceable in that jurisdiction without invalidating the remaining provisions hereof, or affecting the validity or enforceability of such provision in any other jurisdiction.

27. Contractual Commitments

Buyer and Seller agree that there shall be no adjustment in the price, time for performance or any other provision of this PO unless Buyer's authorized representative shall have issued a written order directing a change hereto.

28. Superseding Statement

This PO contains the entire agreement between Buyer and Seller and is not subject to variation, irrespective of the wording of Seller's acceptance. This PO supersedes any and all prior agreements of the Buyer and Seller, whether oral or written, concerning the subject matter hereof.